

IN THE
SUPREME COURT OF THE UNITED STATES

No. **78-5606**

CLAUDE M. HARDY,
Petitioner,
-vs-
STATE OF MISSOURI,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE MISSOURI COURT OF APPEALS

CLAUDE M. HARDY,
Petitioner,

LEE M. NATION,
KEVIN LOCKE,
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I N D E X

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TABLE OF CITATIONS

CASES:

Taylor v. Louisiana, 419 U.S. 522 (1975).
Hoyt v. Florida, 368 U.S. 57 (1961).
State v. Billy Duren, 556 S.W.2d 11 (Mo.banc 1977).
State v. Gethers, 227 S.E.2d 832 (Ga.App. 1976).
Robinson v. Kimbrough, 540 F.2d 1264 (5th Cir. 1976).

STATUTES:

Sixth Amendment, United States Constitution
Fourteenth Amendment, United States Constitution
Article I, §22(b), Missouri Constitution
§497.130, Revised Statutes of Missouri
New York Judiciary Law §542(7)
Conn. Gen. Stat. Rev. §51-218, -219
Ga. Code Ann. §59-112(6)
La. Stat. Ann. §13-3055
Okla. Stat. Ann. Title 38, §28
R. I. Gen. Laws Ann. §9-9-11
Utah Code Ann. §78-46-10(14)

PETITION FOR A WRIT OF CERTIORARI
TO THE MISSOURI SUPREME COURT

Petitioner, Claude M. Hardy, prays that a writ of certiorari issue to review the judgment and opinion of the Missouri Court of Appeals entered in the above-entitled case on June 12, 1978.

OPINION BELOW

The opinion and decision of the Missouri Court of Appeals is reported at 568 S.W.2d 86. A copy of the opinion appears in Appendix A attached hereto.

JURISDICTION

The opinion and judgment of the Missouri Court of Appeals was entered June 12, 1978. Thereafter, a motion for rehearing was filed on June 27, 1978. See, Missouri Rule of Court 84.17. The motion was overruled July 3, 1978. An application to transfer the cause to the Missouri Supreme Court was filed July 11, 1978. Missouri Rule of Court 83.03. On July 24, 1978, said application was denied by the Missouri Supreme Court, making the opinion of the Court of Appeals the final judgment of the highest court in the State of Missouri.

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257 (3).

QUESTION PRESENTED

WHETHER MISSOURI'S STATUTORY AND CONSTITUTIONAL SCHEME FOR THE SELECTION OF PETIT JURORS -- WHICH GRANTS WOMEN AN AUTOMATIC EXEMPTION BASED SOLELY ON SEX -- DENIED PETITIONER HIS RIGHT TO TRIAL BY JURY AND DUE PROCESS OF LAW AS MANDATED AND INTERPRETED BY THIS COURT'S OPINION IN TAYLOR V. LOUISIANA, 419 U.S. 522 (1975).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Sixth Amendment to the United States Constitution and the Due Process Clause of the Fourteenth Amendment to the United States Constitution:

Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, "

Fourteenth Amendment

" . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

Petitioner, Claude M. Hardy, was charged by indictment with the crimes of rape and kidnapping. Jury trial was held in the Jackson County, Missouri Circuit Court (Smith, J.) in Kansas City, Missouri. Verdicts of guilt were returned and Petitioner was sentenced to serve consecutive ten (10) and twenty-five (25) year terms in the Missouri Division of Corrections.

HOW FEDERAL QUESTION
IS PRESENTED

1. Appellant filed a motion to quash the jury panel in this cause on the basis that Article I, §22(b) of the Constitution

of Missouri and \$494.031, RSMo 1969, resulted in a disproportionately small number of women being available for jury service, denying appellant his right to a jury selected from a fair cross-section of the community. A hearing was held on the motion, and John R. Fitzgerald, Jury Commissioner for the Sixteenth Judicial Circuit, testified as to the manner in which the jury wheel for 1976 was compiled. He testified that 65,207 questionnaires¹ were mailed to prospective jurors in 1975, and that of that group 37,337 were excused leaving, according to Mr. Fitzgerald, 27,868 names on the jury wheel for 1976. Mr. Fitzgerald did not testify regarding why the 37,337 prospective members of the jury wheel were excused.

Robert J. Kramer, Director of Data Processing for the Circuit Court of Jackson County, Missouri, testified that he supervised the creation of the jury wheel for 1976, and that, by computer, one of every four registered voters in Kansas City and Independence were sent a questionnaire and that of that group 37,339 were excused for various reasons. He had no knowledge of how many of those persons who were excused were women, or why they were excused.

Charles M. Rogers, an Assistant Public Defender, testified that he examined the jury wheel for 1976 and counted 19,755 males and 8,099 females. He testified that he examined weekly lists of jurors summoned and tabulated the number of males and females summoned, the number excused, deferred, the number who failed to appear, and the total number of jurors who appeared. He then prepared Defendant's Exhibit No. 7,² which he testified reflected the totals of the foregoing categories. He testified further that he prepared the exhibit on several different occasions, several hours at a stretch, and that the exhibit was finally typed up by himself and three secretaries over a period of several months.

¹ A sample questionnaire is in Appendix B attached hereto.

² Mr. Rogers' tables are found in Appendix C attached hereto.

Thomas Larson, at that time Public Defender for Jackson County, Missouri, testified that he personally examined 30,165 questionnaires returned by females, and that he categorized the questionnaires as follows:

(1) Exhibit 9 - No longer a Jackson County Resident	817
(2) Exhibit 10 - Some form of employment exemption claimed along with female exemption or unwillingness to serve	21
(3) Exhibit 11 - Professional employment claimed along with female exemption or unwillingness to serve	93
(4) Exhibit 12 - Served within past year	132
(5) Exhibit 13 - Served within past year but also claimed female exemption or unwillingness to serve	20
(6) Exhibit 14 - Schoolteachers but also claim female exemption or unwillingness to serve	437
(7) Exhibit 15 - Nursing home resident	50
(8) Exhibit 16 - Physical disability or other statutory disability	1,106
(9) Exhibit 17 - Birthdate 1910 or before	2,059
(10) Exhibit 18 - Birthdate after 1955	151
(11) Exhibit 19 - Deceased	53
(12) Exhibit 21 - Willing to serve	3,342
(13) Exhibit 20 - Exercise of female exemption or unwillingness to serve only	21,884
TOTAL	30,165

Lastly, census evidence was introduced showing Jackson County to be 54% female.

At the close of Petitioner's presentation of evidence on the Motion, the State offered no evidence and the Motion was overruled.

2. Subsequent to his trial, petitioner filed a timely motion for new trial alleging the instant allegation. A timely appeal was then prosecuted to the Missouri Court of Appeals, Kansas City District, which affirmed petitioner's conviction by opinion

dated June 12, 1978. Motion for rehearing was overruled July 3, 1978. Application to transfer the cause to the Missouri Supreme Court was denied July 24, 1978. The issue raised herein was raised and argued before the trial court and the Missouri Court of Appeals, whose opinion has now become the final judgment of the Missouri Supreme Court with the denial of the application to transfer. Missouri Rule of Court 83.03.

REASONS FOR GRANTING
THE WRIT

The opinion and decision of the Missouri Court of Appeals in the instant case is in direct conflict with past decision of this Court, various federal courts of appeals and several state high courts. Specifically, Petitioner contends the instant opinion is in conflict with Taylor v. Louisiana, 419 U.S. 522 (1975) and thus, cannot stand. Taylor held Article VII, Section 41 of the Louisiana Constitution and Article 402 of the Louisiana Code of Criminal Procedure (since repealed) violative of Taylor's due process rights guaranteed by the XIV Amendment to the United States Constitution.

The Louisiana law is reproduced here for the convenience of the Court:

Article VII, Louisiana Constitution

§41. Selection of jurors; women jurors; trial by judge; trial by jury.

The Legislature shall provide for the selection and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration

of her desire to be subject to such service. All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict.

Louisiana Code of Criminal Procedure

Article 402. Service of women as jurors.

A woman shall not be selected for jury service unless she has previously filed with the clerk of court of the parish in which she resides a written declaration of her desire to be subject to jury service.

The United States Supreme Court in Taylor re-examined the question of automatic exclusion of women from the juries previously decided by the Court in Hoyt v. Florida, 368 U.S. 57, 7 L.ED.2d 118, 82 S.Ct. 159 (1961) and they reached a different result. Accordingly, the Court stated:

"Accepting as we do however, the view that the VI Amendment affords the Defendant in a criminal trial the opportunity to have the jury drawn from venires representative of the community, we think it is no longer tenable to hold that women as a class may be excluded or given automatic exemptions based solely on sex if the consequences are that criminal jury venires are almost totally male."

(42 L.Ed.2d 690 at 702) [emphasis added]

The question presented herein then whether Missouri offers an "automatic exemption based solely on sex" and if, "the consequences are that criminal jury venires are almost totally male."

The Missouri Constitution, Article I, Section 22(b) states: "No citizen shall be disqualified from jury service because of sex, but the court shall excuse any woman who requests exemption therefrom before being sworn as a juror." This Article is implemented by Section 497.130, Missouri Revised Statutes (1974), which section allows women to "elect to serve or not to serve as jury women."

When placed side by side and examined, the Missouri system and the Louisiana system (later changed) both offer an absolute exemption to jury service based strictly upon gender. The difference being only that in Louisiana the woman must affirmatively opt for service while her Missouri sister must affirmatively choose not to serve.

The Appellant's argument is much better stated by the United States Supreme Court's final paragraph in the Taylor opinion:

"... but the jury wheels, pools of names, panels, or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof."

Petitioner concludes that "(t)he States remain free to prescribe relevant qualifications for their jurors and to provide reasonable exemptions. . ." Taylor v. Louisiana, at 538. Petitioner, however, does not believe that a blanket exemption for women is a reasonable exemption. Indeed, as pointed by Mr. Justice Seiler in his dissenting opinion in State v. Billy Duren, 556 S.W.2d 11, 24. n.4 (1977):

"The federal court (the United States District Court for the Western District of Missouri) provides for excuse on request by a woman charged with care of minor children

without adequate domestic help."

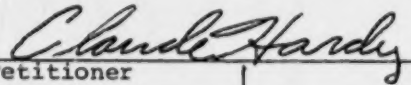
Petitioner maintains that this is a reasonable exemption for women and would not serve to deny an accused his constitutional right to a representative jury: in the federal court in Kansas City, 53% of the persons on jury wheel are women and 39.8% of the actual jurors chosen were women. 556 S.W.2d at 24. This data can be contrasted with the Missouri courts: 29% of the persons on the wheel are women; seldom over 15% of the persons appearing for jury service are women, and often juries are all male.

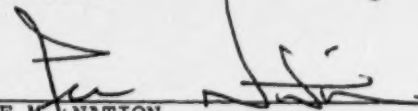
Since Taylor, several states have been faced with challenges to exemptions to women. All, except Missouri, have changed the exemption by either statute or court decision, see, e.g. State v. Gethers, 227 S.E.2d 832 (Ga.App. 1976); Robinson v. Kimbrough, 540 F.2d 1264 (5th Cir. 1976); New York Judiciary Law 549(7); Conn. Gen. Stat. Rev. §51-218, 219; Ga. Code Ann. §59-112(6); La. Stat. Ann. §13-3055; Okla. Stat. Ann. Title 38 §28; Rhode Island Gen. Laws Ann. §9-9-11; Utah Code Ann. §78-46-10(14). Missouri remains the only state with an automatic exemption for women. Further, this exemption causes gross underrepresentation of women on jury panels. (See attached exhibits as to the women appearing for jury service). The instant opinion cannot stand as a correct interpretation of this Court's opinion in Taylor. Unlike the Missouri Supreme Court, Petitioner does not believe Taylor stands for the proposition that any percentages of women on jury panels, higher than those found in Taylor, is constitutionally permissible; instead Taylor condemns jury mechanisms which deny an accused his right to a jury drawn from a reasonable cross-section of society. The Missouri jury selection system is of such a breed.

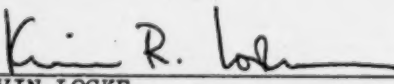
Accordingly, a Writ of Certiorari should issue to review the opinion of the Missouri Supreme Court affirming Petitioner's conviction.

CONCLUSION

WHEREFORE, Petitioner respectfully requests this Court to issue a Writ of Certiorari to the Missouri Supreme Court.

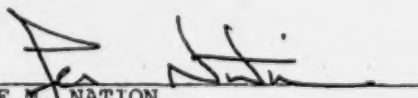

Petitioner


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A copy of the above and foregoing was mailed, postage prepaid, on this the 20 day of Oct, 1978, to the Office of the Attorney General John Ashcroft, Supreme Court Building, Jefferson City, Missouri, 65101.


LEE M. NATION

APPENDIX A

OPINION RENDERED BY MISSOURI COURT OF APPEALS,
JUNE 12, 1978

APPENDIX A IS THE OPINION OF THE COURT
IN STATE OF MISSOURI V. HARDY AND CAN
BE FOUND AT 568 S.W.2d 86. IT HAS NOT BEEN
FILMED HERE.

SAMPLE QUESTIONNAIRE

**RETURN THIS
QUESTIONNAIRE
WITHIN 10 DAYS.**

APPENDIX C

DEFENSE EXHIBIT 7

TABLE OF JURORS SUMMONED IN JACKSON COUNTY FOR
SERVICE IN KANSAS CITY - JANUARY, 1976

WEEK	JURORS SUMMONED		EXCUSED OR DECEASED	DEFERRED	ABSENT	APPEARED FOR SERVICE	
1/5/76	Male	247 (75.5%)	70	19	6	152	(92.7%)
	Female	80 (24.5%)	49	2	17	12	(7.3%)
	Total	327	119	21	23	164	
1/12/76	Male	260 (76.5%)	64	25	24	147	(88.6%)
	Female	80 (23.5%)	48	1	12	19	(11.4%)
	Total	340	112	26	36	166	
1/19/76	Male	245 (76.3%)	71	18	14	142	(87.1%)
	Female	76 (23.7%)	45	0	10	21	(12.9%)
	Total	321	116	18	24	163	
1/26/76	Male	234 (72.0%)	85	12	15	122	(81.9%)
	Female	91 (28.0%)	44	2	18	27	(18.1%)
	Total	325	129	14	33	149	
TOTALS							
FOR	Male	986 (75.1%)	290	74	59	563	(87.7%)
JANUARY	Female	327 (24.9%)	186	5	57	79	(12.3%)
1976	Total	1,313	476	79	116	642	

TABLE OF JURORS SUMMONED IN JACKSON COUNTY FOR
SERVICE IN KANSAS CITY - FEBRUARY, 1976

WEEK OF		JURORS SUMMONED		EXCUSED DECEASED	DEFERRED	ABSENT	APPEARED FOR SERVICE	
2/2/76	Male	224 (70.9%)		64	26	16	118	(79.7%)
	Female	92 (29.1%)		46	4	12	30	(20.3%)
	Total	<u>316</u>		<u>110</u>	<u>30</u>	<u>28</u>	<u>148</u>	
2/9/76	Male	243 (73.6%)		66	18	23	136	(82.9%)
	Female	87 (26.4%)		48	1	10	28	(17.1%)
	Total	<u>330</u>		<u>114</u>	<u>19</u>	<u>33</u>	<u>164</u>	
2/17/76	Male	120 (67.1%)		35	13	4	68	(81.0%)
	Female	59 (32.9%)		37	1	5	16	(19.0%)
	Total	<u>179</u>		<u>72</u>	<u>14</u>	<u>9</u>	<u>84</u>	
2/23/76	Male	235 (69.9%)		59	19	7	150	(84.7%)
	Female	101 (30.1%)		53	2	19	27	(15.3%)
	Total	<u>336</u>		<u>112</u>	<u>21</u>	<u>26</u>	<u>177</u>	
TOTALS FOR FEBRUARY 1976	Male	822 (70.8%)		224	76	50	472	(82.4%)
	Female	339 (29.2%)		184	8	46	101	(17.6%)
	Total	<u>1,161</u>		<u>408</u>	<u>84</u>	<u>96</u>	<u>573</u>	

TABULATION OF DATA OBTAINED FROM LISTS OF JURORS SUMMONED FOR MARCH, 1976.

Week beginning:

March 1,
1976.

	Jurors Summoned	(%)	Excused	Deferred	Not Appearing	Appeared For Service	(%)
Female	90	(72.0%)	56	2	13	19	(13.1%)
Male	231	(28.0%)	64	21	20	126	(86.9%)
Total	321		120	23	33	145	

March 8,
1976.

Female	107	(31.9%)	64	2	9	32	(21.8%)
Male	228	(68.1%)	67	37	9	115	(78.2%)
Total	335		131	39	18	147	

March 15,
1976.

Female	107	(31.2%)	62	3	17	25	(15.2%)
Male	228	(68.8%)	58	23	15	140	(84.8%)
Total	343		120	26	32	165	

March 22,
1976.

Female	50	(26.0%)	27	1	8	14	(15.6%)
Male	142	(74.0%)	40	17	9	76	(84.8%)
Total	192		67	18	17	90	

March 29,
1976.

Female	99	(28.6%)	65	3	11	20	(12.5%)
Male	247	(71.4%)	70	27	10	140	(87.5%)
Total	346		135	30	21	160	

Total for
Weeks of
March, 1976.

Female	453	(29.5%)	274	11	58	110	(17.0%)
Male	1,084	(70.5%)	299	125	63	597	(83.0%)
TOTAL	1,537		573	136	121	707	

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, APRIL, 1976,

week of		Summoned	Excused	Deferred	Not Appearing	Appeared For Service
4/5/76	Male	248 (71.1%)	65	29	15	139 (79.9%)
	Female	101 (28.9%)	51	1	14	35 (20.1%)
	Total	349	116	30	29	174
4/12/76	Male	254 (72.2%)	72	21	13	148 (83.1%)
	Female	98 (27.8%)	51	0	17	30 (16.9%)
	Total	352	123	21	30	178
4/19/76	Male	235 (70.6%)	67	21	12	135 (86.5%)
	Female	98 (29.4%)	54	2	21	21 (13.5%)
	Total	333	121	23	33	156
4/26/76	Male	121 (74.7%)	29	14	6	72 (90.0%)
	Female	41 (25.3%)	23	0	10	8 (10.0%)
	Total	162	52	14	16	80
TOTALS FOR APRIL, 1976	Male	858 (71.7%)	233	85	46	494 (84.0%)
	Female	338 (25.3%)	179	3	62	94 (16.0%)
	Total	1196	412	88	108	588

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, MAY, 1976

Week of		Summoned	(%)	Excused	Deferred	Not Appearing	Appeared for Service
5/3/76	Male	240	(72.7%)	60	17	15	148 (87.1%)
	Female	90	(27.3%)	48	2	18	22 (12.9%)
	Total	330		108	19	33	170
5/10/76	Male	236	(72.7%)	52	27	12	145 (89.0%)
	Female	89	(27.3%)	56	0	15	18 (11.0%)
	Total	325		108	27	27	163
5/17/76	Male	231	(72.6%)	56	29	12	134 (86.5%)
	Female	87	(27.4%)	52	2	12	21 (13.5%)
	Total	318		108	31	24	155
5/24/76	Male	239	(74.5%)	53	26	13	147 (85.5%)
	Female	82	(25.5%)	43	1	13	25 (14.5%)
	Total	321		96	27	26	172
Totals for May, 1976	Male	946	(73.3%)	221	99	52	574 (87.0%)
	Female	348	(26.7%)	199	5	58	86 (13.0%)
	Total	1,294		420	104	110	660

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, JUNE, 1976

Week of		Summoned	(%)	Excused	Deferred	Not Appearing	Appeared for Service
6/1/76	Male	217	(71.6)	54	29	12	122 (82.4%)
	Female	86	(28.4%)	42	4	14	26 (17.6%)
	Total	303		96	33	26	148
6/7/76	Male	255	(76.8%)	51	35	13	156 (86.2%)
	Female	77	(23.2%)	41	1	10	25 (13.8%)
	Total	332		92	36	23	181
6/14/76	Male	124	(70.1%)	25	18	5	76 (87.4%)
	Female	53	(29.9%)	33	1	8	11 (12.6%)
	Total	177		58	19	13	87
6/21/76	Male	254	(75.8%)	77	33	10	134 (92.4%)
	Female	81	(24.2%)	50	2	18	11 (7.6%)
	Total	335		127	35	28	145
6/28/76	Male	258	(75.4%)	60	40	19	139 (84.2%)
	Female	84	(24.6%)	47	0	11	26 (15.8%)
	Total	342		107	40	30	165
Totals for June, 1976							
	Male	1,108	(74.4%)	267	155	59	627 (86.4%)
	Female	381	(25.6%)	213	8	61	99 (13.6%)
	Total	1,489		480	163	120	726

TABLE OF JURORS SUMMONED FOR DUTY IN KANSAS CITY, JULY, 1976

Week of		Summoned	(%)	Excused	Deferred	Not Appearing	Appeared for Service
7/6/76	Male	241	(76.0%)	74	23	12	132 (89.2%)
	Female	76	(24.0%)	50	1	9	16 (10.2%)
	Total	317		124	24	21	148
7/12/76	Male	244	(73.5%)	79	27	12	126 (86.3%)
	Female	88	(26.5%)	57	1	10	20 (13.7%)
	Total	332		156	28	22	146
7/19/76	Male	216	(74.5%)	53	33	14	116 (87.9%)
	Female	74	(25.5%)	41	4	13	16 (12.1%)
	Total	290		94	37	27	132
7/26/76	Male	136	(70.8%)	39	17	5	75 (78.1%)
	Female	56	(29.2%)	28	2	5	21 (21.9%)
	Total	192		67	19	10	96
Totals for July, 1976.							
	Male	837	(74.0%)	245	100	43	449 (86.0%)
	Female	294	(26.0%)	176	8	37	73 (14.0%)
	Total	1,131		421	108	80	522

FILED

DEC 30 1978

MICHAEL ROLAND, JR., CLERK

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IN THE
SUPREME COURT OF THE
UNITED STATES

TERM, 1979

NO. 78-5606

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Petitioner,

v.

STATE OF MISSOURI,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
MISSOURI COURT OF APPEALS, KANSAS CITY DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

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TABLE OF CASES

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42 L.Ed.2d 690 (1975);

Article I, §22(b), Missouri Constitution

Article XII, §41, Louisiana Constituion (since repealed)

Section 494.010, RSMo. 1969

Section 494.020, RSMo. 1969, as amended

Section 494.031, RSMo. 1969, as amended

Section 497.130, RSMo. 1969, as amended

Chapter 497, RSMo. 1969, as amended.

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OPINION BELOW

The opinion and decision of the Missouri Court of Appeals, Kansas City District, is reported at 568 S.W.2d 86 (Mo.Ct.App. at K.C. 1978). A copy of the opinion appears in petitioner's Appendix A.

JURISDICTION

On June 12, 1978, the Missouri Court of Appeals issued its opinion affirming the petitioner's conviction for one count of kidnapping and one count of rape. Thereafter, on June 27, 1978, the petitioner filed a timely motion for rehearing. On July 3, 1978, the petitioner's motion for rehearing was overruled. Thereafter, an application to transfer

the cause to the Missouri Supreme Court was filed on July 11, 1978, which application was denied on July 24, 1978. On October 23, 1978, the petitioner filed with this Court a petition for Writ of Certiorari to the Missouri Court of Appeals. On December 4, 1978, the respondent was directed to file a response in the instant case.

The jurisdiction of the Court is invoked under Title 28, United States Code, § 1257(3).

QUESTION PRESENTED

WHETHER THE PETITIONER WAS DENIED THE RIGHT TO A FAIR TRIAL BY VIRTUE OF THE PROVISION OF THE MISSOURI CONSTITUTION WHICH PERMITS WOMEN TO DECLINE JURY SERVICE?

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Sixth and Fourteenth Amendments to the United States Constitution, Article I, § 22(b), of the Missouri Constitution, § 494.020, § 494.031, and Chapter 497 of the Missouri Revised Statutes, 1969, as amended. The Missouri constitutional and statutory provisions mentioned above are set out in full in the Respondent's Appendix A.

STATEMENT

In November, 1976, the petitioner, Claude M. Hardy, was tried for, and convicted of, one count of kidnapping and one count of rape. Prior to trial, the petitioner filed a motion to quash the jury panel. As stated in the Respondent's State Appellate Court brief, and without benefit of quotation marks in the petitioner's Petition For Writ Of Certiorari, the pre-trial motion was conducted in the following manner:

"Appellant filed a motion to quash 'any jury panel that may be produced as prospective jurors in this cause' (Tr. 9) on the basis that Article I, §22(b) of the Constitution of Missouri and §494.031, RSMo 1969, resulted in a disproportionately small number of women being available for jury service, denying

appellant his right to a jury selected from a fair cross-section of the community. A hearing was held on the motion, and John R. Fitzgerald, Jury Commissioner for the Sixteenth Judicial Circuit, testified as to the manner in which the jury wheel for 1976 was compiled. He testified that 65,207 questionnaires were mailed to prospective jurors in 1975, and that of that group 37,337 were excused leaving, according to Mr. Fitzgerald, 27,868 names on the jury wheel for 1976 (Tr. 29-30). Mr. Fitzgerald did not testify regarding why the 37,337 prospective members of the jury wheel were excused (Tr. 30).

"Robert J. Kramer, Director of Data Processing for the Circuit Court of Jackson County, Missouri, testified that he supervised the creation of the jury wheel for 1976, and that, by computer, one of every four registered voters in Kansas City and Independence were sent a questionnaire (Tr. 31,32), and that of that group 37,339 were excused for various reasons (Tr. 36). He had no knowledge of how many of those persons who were excused were women, or why they were excused (Tr. 38).

"Charles M. Rogers, an Assistant Public Defender, testified that he examined the jury wheel for 1976 and counted 19,755 males and 8,099 females (Tr. 40).¹ He testified that he examined weekly list of jurors summoned and tabulated the number of males and females summoned, the number excused, deferred, the number who failed to appear, and the total number of jurors who appeared (Tr. 39). He then prepared Defendant's Exhibit No. 7, which he testified reflected the totals of the foregoing categories. He testified further that he prepared the exhibit on several different occasions, several hours at a stretch, and that the exhibit was finally typed up by himself and three secretaries over a period of several months (Tr. 44).

¹ Mr. Rogers' figures reflect a total of 27,854 men and women on the jury wheel for 1976. Mr. Fitzgerald testified that 27,868 names appeared on the 1976 jury wheel; the gender of the remaining 14 persons is a matter of speculation.

"Thomas Larson, at that time Public Defender for Jackson County, Missouri, testified that he personally examined 30,165 questionnaires returned by females, and that he categorized the questionnaires as follows (Note that the following reflects the figures set out in appellant's brief at page 10, with the exception of Category No. 5):

"(1) Exhibit 9-No longer a Jackson County Resident (T. 48-9)	817
"(2) Exhibit 10-Some form of employment exemption claimed along with female exemption or unwillingness to serve (T. 49)	21
"(3) Exhibit 11-Professional employment claimed along with female exemption or unwillingness to serve (T. 50)	93
"(4) Exhibit 12-Served within past year (T. 50-1)	132
"(5) Exhibit 13-Served within past year but also claimed female exemption or unwillingness to serve (T. 51)	20
"(6) Exhibit 14-Schoolteachers but also claim female exemption or unwillingness to serve (T. 51)	437
"(7) Exhibit 15-Nursing home resident (T. 52)	50
"(8) Exhibit 16-Physical disability or other statutory disability (T. 52-3)	1,106
"(9) Exhibit 17-Birthdate 1910 or before (T. 53-4)	2,059

"(10) Exhibit 18-Birthdate after 1955 (T. 55)	151
"(11) Exhibit 19-Deceased (T. 56)	53
"(12) Exhibit 21-Willing to serve (T. 56)	3,342
"(13) Exhibit 20-Exercise of female exemption or unwillingness to serve only (T. 56-7)	21,884
Total	30,165

"The court took judicial notice of the Bureau of Census statistics for Jackson County, Missouri (Tr. 59). Defendant's motion to quash the jury panel was overruled (Tr. 64)."

Subsequent to the petitioner's trial and conviction, an appeal was taken to the Missouri Court of Appeals, Kansas City District. In essence, one basis of the petitioner's argument on appeal was identical to that now advanced by the petitioner; that the exemption permitted by Article I, § 22(b) of the Missouri Constitution operated to deny the petitioner the right to a trial by jury representing a fair cross-section of the community.

On June 12, 1978, the Missouri Court of Appeals affirmed the petitioner's conviction in an opinion contained at 568 S.W.2d 86. The Court disposed of the petitioner's constitutional argument, citing the Missouri Supreme Court decision in State v. Duren, 556 S.W.2d 11 (Mo. banc 1977), a case in which this Court heard argument during the October, 1978 Term on a Writ of Certiorari to the Missouri Supreme Court. The petitioner's motion for rehearing was denied by the Court of Appeals on July 3, 1978, and its motion to transfer was denied by the Missouri Supreme Court on July 24, 1978.

In order to fully understand the question presented by this case, it is necessary to consider the jury selection system which is employed in Jackson County, Missouri. That

system is mandated by §494.031, §494.020, and Chapter 497 of the Revised Statutes of Missouri, 1969 as amended and Article I, §22(b) of the Missouri Constitution. Each of these provisions appears in respondent's Appendix A.

The jury selection system in Jackson County begins with that county's voter registration list. From that list, the jury commissioner selects, at random and by computer, approximately 65,000 names. A questionnaire is then sent to each individual selected. A copy of that questionnaire appears in §497.130, RSMo., 1969 as amended, respondent's Appendix A. Among other things, the questionnaire notifies women of their right to be excused from jury duty. When the questionnaires are returned, the jury commissioner eliminates the names of all individuals whose questionnaire indicates that he has exercised his right to be excused, or that he is unqualified to serve as a juror.² The remaining pool of names is then entered into a computer, and nearly 28,000 names are randomly selected for the master jury wheel. If an individual fails to return the questionnaire, that individual's name is automatically included in the pool from which the master jury wheel is selected. In Jackson County, a new jury wheel is prepared each year.

Individuals are periodically selected from the master jury wheel by computer to make up the general jury panel for all civil and criminal divisions of the Jackson County Circuit Court. By random selection from the jury wheel, individuals are summoned to jury service. The summonses include a notification to women that they have a right to be

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In order to promote an orderly and efficient judicial system, certain individuals are excluded from jury service by §494.020, RSMo. 1969 as amended. For example, licensed attorneys and those unable to understand the English language may not serve on juries in Missouri. Section 494.031, RSMo., 1969 as amended, on the other hand, allows certain individuals to be excused from jury duty if they take a timely application to the court. For example, persons over 65 years of age, doctors of medicine, school teachers, government workers, and clergy may apply to be excused. Also, Article I, §22(b) of the Missouri Constitution mandates that the court shall excuse any woman who requests exemption before she is sworn.

excused from jury duty. After receiving a summons, an individual is given the opportunity to present to the circuit court reasons why he or she would be unable to appear in the circuit court for jury duty. If a woman does not appear, it is assumed that she has exercised her right not to serve. Venire panels are then randomly selected from the individuals who have appeared for jury duty, and a petit jury is selected from the venire panel. In the petitioner's case, the record on appeal supplied by the petitioner does not indicate the sexual composition of the jury venire or the petit jury.

ARGUMENT

The decision of the Missouri Court of Appeals in State of Missouri v. Claude M. Hardy is not in conflict with this Court's decision in Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975), in that Article I, §22(b) of the Missouri Constitution does not operate to exclude women from jury service.

In Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975) (hereinafter, "Taylor"), this Court held that the jury selection system employed by the State of Louisiana deprived criminal defendants of their right to an impartial trial. Louisiana Constitutional Article XII, §41 (since repealed) sets out the constitutionally offensive procedure:

"The legislature shall provide for the election and drawing of competent and intelligent jurors for the trial of civil and criminal cases; provided, however, that no women shall be drawn for jury service unless she shall have previously filed with the clerk of the district court a written declaration of her desire to be subject to such service. . . ."

This Court concluded that the above-quoted provision operated to systematically exclude women from jury service, and therefore, deprived criminal defendants of a jury composed of a fair cross-section of the community.

Relying on the decision in Taylor, the petitioner argues that he too has been deprived of his rights to a fair trial because Article I, §22(b) of the Missouri Constitution allows women to avoid jury duty by requesting an exemption. The Louisiana constitutional provision cited, and Article I, §22(b) of the Missouri Constitution, however, are readily distinguishable. Under the constitutionally offensive Louisiana system, a woman would not have been eligible for jury service unless she were to have taken affirmative steps to inform the court of her desire to serve as a juror. In Missouri, however, women are automatically included in the jury list. They are excused from jury service only when they take affirmative steps to notify the courts that they do not wish to serve. The Missouri system of jury selection, therefore, does not exclude women. It merely permits women to actively seek exemption from jury service. This Court's opinion in Taylor stated ". . . jury wheels, pools of names, panels or venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." (Emphasis added). Taylor, supra, at 538. While the petitioner relies on the above-quoted language from Taylor, it is evident that Missouri does not use the force of its law to exclude women from juries. On the contrary, Missouri merely permits women, through Article I, §22(b) of the Missouri Constitution, to exempt themselves from juries. Simply stated, Missouri excludes no women from jury service on the basis of their gender. The distinction between Louisiana's "opt-on" system and Missouri's "opt-off" system is crucial and dispositive.

Taylor also indicates that a defendant must show that the jury wheels from which juries are chosen fail to represent a cross-section of the community. The petitioner has asserted that he has met the burden of proof imposed by Taylor. The jury statistics in Taylor, however, outline a factual framework

which is radically different from that with which we deal in this cause. In Taylor, 53% of the persons eligible for jury service were female, while no more than 10% of the persons on the jury wheel involved were women. In marked contrast, while in Jackson County the petitioner suggests that 54.4% of the persons eligible for jury service are women, the 1976 jury wheel list was comprised of slightly less than 29.1% females. Additionally, in Taylor there were no females in the 175 person jury venire. In the present case, the record on appeal supplied by the petitioner does not reflect the sexual make-up of the petit jury or the jury venire. It thus seems clear that this Court in Taylor was confronted by a Louisiana jury selection system which departed significantly from that which Missouri employs, and was confronted with lopsided statistics which bear no relationship to those produced by the petitioner in this case.

II.

This case is plagued with evidentiary problems which will prevent this Court from reaching the question of whether the defendant's right to a fair trial has been denied.

The petitioner alleges that the exemption from jury service permitted females in Missouri causes gross under-representation of women on jury panels. The record in this case, however, fails to demonstrate, in a convincing fashion, any relationship between Article I, §22(b), and the alleged under-representation of women on juries in Jackson County.

First, the petitioner has failed to present eligible population statistics for the year of his trial. Exhibit 8, introduced by the petitioner in support of his motion to quash included 1970 United States Census figures which show that Jackson County had approximately 407,000 inhabitants twenty-one years of age or older. Approximately 54% of those inhabitants were women. The annual Jackson County jury selection process, however, begins with a current voter registration list. No proof has been made that the sexes register

to vote in direct relation to their numbers, or that there was not a significant change in the population makeup of Jackson County, Missouri, between 1970 and 1976 when the petitioner's jury was selected. As stated by the Missouri Supreme Court in State v. Duren, 556 S.W.2d 11 (Mo. banc 1977);

"All of this suggests that statistics of current 'eligible population' referred to in Alexander v. Louisiana, supra, not six year old gross population figures, provide the proper starting point." State v. Duren, supra, at 16.

Finally, certain other statistics presented by the petitioner in support of his argument are unpersuasive. Exhibit 20, as testified to by Thomas Larson, concerned questionnaires in which Larson was unable to discern from their face anything that would exempt the person on any ground other than the female exemption. This total was 21,884 out of 30,165 women who received the questionnaire. Thus, at the pre-trial motion, the petitioner contended that these statistics demonstrate that approximately 72.6% of the 30,165 women receiving the questionnaire opted-off jury service merely because, as females, they were permitted to do so by Missouri law. This conclusion remains unsupported.

The questionnaire which is the subject of the petitioner's stipulation was sent to prospective jurors in Jackson County, and filled out and returned to them in accordance with §497.130, RSMo., 1969 as amended.

The last paragraph of the questionnaire reads:

"TO WOMEN:

"The constitution permits women to elect to serve or not to serve as jury women. Any woman who elects not to serve will fill out this paragraph and mail this questionnaire to the jury commissioner at once. It will not be necessary to answer the other questions.

I elect not to perform jury service.

.....
Signature"

The sentence, "[i]t will not be necessary to answer the other questions" suggests that unascertainable numbers of the 21,884 women who returned questionnaires having signed at the bottom of the paragraph quoted above did simply that; signed at the bottom of the paragraph and declined to fill out the rest of the questionnaire. The petitioner attempts to suggest that all questionnaires so returned were the questionnaires of women who were only subject to exemption from jury service by virtue of their gender. This suggestion is unsubstantiated. There is no proof offered that every woman who chose to simply sign her name was without the requisite qualifications for any number of other possible exemptions. If, for example, a woman was also a lawyer or a physician, the exemption she would have had for her profession would not have been noted on the questionnaire if she had merely expedited matters by signing the last paragraph. As a result, an indeterminate number of women who merely signed and returned the questionnaire might have had a basis for exemption for all those reasons listed in questions 3, 4, 5, 6, 8, 9, 11, and 12 of the questionnaire.

From the evidence produced by the petitioner, it has not been proved that all of those women returning a questionnaire who signed only the last paragraph were incapable of having themselves excluded on grounds other than gender and Article I, §22(b) of the Missouri Constitution. As a result, the petitioner has failed to prove that his jury was illegally constituted by virtue of Missouri's female exemption provisions.

Even if every questionnaire returned by a female was completely filled out, and if every one revealed no other possible basis for an exemption other than gender, that fact alone would still not demonstrate that those women would not have been exempted from jury service for other reasons recognized by Missouri, and unchallenged by the petitioner.

For instance, under §494.031, RSMo., 1969 as amended, a woman might have had an exemption for being an officer or employee of the Executive, Legislative or Judicial branches

of a federal, state, or county government. Likewise, if her jury service would be adverse to the public interest, or if it would impose an undue hardship on her, she would have received an exemption. Under §494.020, RSMo., 1969 as amended, a woman whose questionnaire when completely filled out revealed no apparent basis for an exemption, other than her gender, would nonetheless have been excluded had she been convicted of a felony, been unable to read, speak or write English, or not been correctly drawn. Similarly, §494.010, RSMo., 1969 as amended, demands that jurors be over twenty-one years of age, sober, intelligent citizens of the state, and residents of the city or county served by the jury.

All of the exemptions mentioned above might have been applicable to a woman whose questionnaire indicated only that she was a female and that none of the other exemptions specifically listed on the face of the questionnaire was applicable.

In conclusion, the petitioner's bare recital of the number of women who returned questionnaires having signed only the female exemption paragraph is not convincing. An unascertained number of those questionnaires could have come from women who could, on the face of the questionnaire, have received exemptions on another basis, or who, after having filled out the entire questionnaire, might nonetheless have received exemptions under §494.031, §494.020 or §494.010, RSMo., 1969 as amended.

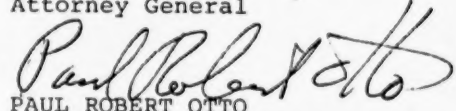
It should be noted that in Taylor the parties stipulated that "the discrepancy between females eligible for jury service and those actually included in the venire was the result of the operation of the Louisiana constitution". Taylor, supra, at 524. The parties in the present action have entered into no such stipulation. As a result, the petitioner has failed to demonstrate that Article I, §22(b) of the Missouri Constitution operates to deny him his rights under the Sixth and Fourteenth Amendments to the United States Constitution.

CONCLUSION

WHEREFORE, the respondent respectfully requests that this Court deny the petitioner's request for a Writ of Certiorari to the Missouri Supreme Court.

Respectfully submitted,

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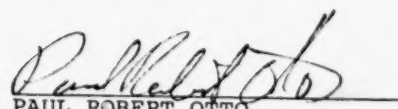
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Paul Robert Otto, of lawful age, upon his oath states that he is an assistant attorney general of the State of Missouri; that on this 27 day of December, 1978, he sent copies of the Brief For Respondent In Opposition To Petition For Writ Of Certiorari to the Missouri Supreme Court in the above-entitled case to the following named person:

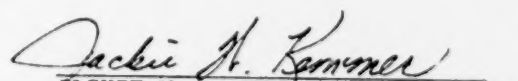
Kevin Locke, Esq.
1305 Locust Street
Suite 202
Kansas City, Missouri 64106

The service to the above-named person was made by mailing one copy, postage prepaid, to the address appearing above.

That ten copies were served on the Clerk of the Supreme Court of the United States, United States Courthouse, Washington, D.C. 20543.


PAUL ROBERT OTTO
Assistant Attorney General

Subscribed and sworn to before me, a notary public, this 27 day of December, 1978.


JACKIE W. KEMMER, Notary Public
In and for the County of Osage,
State of Missouri

My commission expires: December 29, 1980.

APPENDIX A

Missouri Constitution, Article I, §22(b)

Female jurors—optional exemption. No citizen shall be disqualified from jury service because of sex, but the court shall excuse any women who requests exemption therefrom before being sworn as a juror.

Section 494.020, RSMo. 1969, as amended

Persons ineligible for service.—1.
The following persons shall be ineligible to serve as a juror, either grand or petit:

(1) Any person who has been convicted of a felony, unless such person has been restored to his civil rights, or of a misdemeanor involving moral turpitude;

(2) Any person who is unable to read, write, speak and understand the English language;

(3) Any person on active duty in the armed forces of the United States or any member of the organized militia on active duty under order of the governor;

(4) Any licensed attorney at law;

(5) Any judge of a court of record;

(6) Any person who, in the judgment of the court or other authority charged with the duty of selecting jurors, is incapable of performing the duties of a juror because of mental or physical illness or infirmity;

(7) Any person not drawn or selected according to the applicable provisions, respectively, of chapter 540, RSMo, as amended, relating to the selection of grand jurors; chapter 494, RSMo, as amended, relating to the selection of jurors in counties of the third and fourth classes; chapter 495, RSMo, as amended, relating to the selection of jurors in counties of the second class; chapter 496, RSMo, as amended, relating to the selection of jurors in counties now or hereafter containing a population of seven hundred thousand inhabitants or more; chapter 497, RSMo, as amended, relating to the selection of jurors in judicial circuits comprised of a county now or hereafter having a population of not less than four hundred and fifty thousand nor more than seven hundred thousand inhabitants; chapter 498, RSMo, as amended, relating to the selection of jurors in cities of more than five hundred thousand inhabitants; chapter 499, RSMo, as amended, relating to the selection of jurors in magistrate courts.

2. Any person who has served as a member of a grand jury panel within ten years next preceding his selection shall not be eligible for service as a grand juror.

Persons entitled to be excused from jury service.—The following persons shall, upon their timely application to the court, be excused from service as a juror, either grand or petit:

- (1) Any person over the age of sixty-five years;
- (2) Any woman who requests exemption before being sworn as a juror;
- (3) Any person licensed to engage in and actually engaged in the practice of medicine, osteopathy, chiropractic or dentistry;
- (4) Any person actually performing the duties of a clergyman;
- (5) Any professor or teacher in any school or institution of learning;
- (6) Any person who has served upon a regular state or federal petit jury panel within one year next preceding his application and if the jury be a magistrate jury drawn and selected under the provisions of section 499.010, RSMo, no person who has served upon a magistrate jury within one year next preceding his application;
- (7) Any officer or employee of the executive, legislative or judicial departments of the federal, state, county or city government who is actively engaged in the performance of his duties;
- (8) Any person whose absence from his regular place of employment would, in the judgment of the court, tend materially and adversely to affect the public safety, health, welfare or interest;
- (9) Any person upon whom service as a juror would in the judgment of the court impose an undue hardship.

§497.010

3702

Chapter 497

JURIES IN COUNTIES OF 450,000 TO 700,000 INHABITANTS (JACKSON COUNTY)

Sec.	
497.010	Juries, petit and grand, in certain counties.
497.020	Board of jury supervisors—quorum.
497.030	Duties of board of jury supervisors.
497.040	Appointment of jury commissioner.
497.050	Removal of jury commissioner—deputy to serve, when—board to fill vacancy.
497.060	Jury commissioner to take oath of office.
497.070	Salary of jury commissioner.
497.080	Deputy jury commissioner, appointment, oath of office, duties.
497.090	Salary of deputies.
497.100	Meetings of board of jury supervisors.
497.110	Jury commissioner to be secretary of board of supervisors.
497.120	Reports of jury commissioner.
497.130	List of jurors, selection, data processing equipment authorized—questionnaire—refusal to answer, contempt—false answer, misdemeanor.
497.140	Lists of prospective jurors, how kept—data processing equipment authorized—court on hand to select data processing equipment—names selected in presence of board, court—excuses—judge may allow jurors to leave general jury quarters—jury wheel.
497.170	Panel of petit jurors—selections—excuses.
497.180	Extra jurors for trial of particular cause.
497.190	Names of jurors returned to wheel, when.
497.201	General provisions as to disqualification and exemption apply.
497.210	Challenge for cause.
497.220	Summons, how served.
497.240	Courts may direct number of jurors to be summoned and make rules for their service.
497.250	Consecutive time petit juror may serve.
497.260	Special grand jury list.
497.270	Selection of grand jurors.
497.280	List of 600 names to be deposited with the clerk of the circuit court.
497.290	Person or officer failing to perform duties—misdemeanor.

CROSS REFERENCES

Assignment of judges and selection of jury in 16th circuit, RSMo 478.457
When regular juror is disqualified, excused or fails to attend, vacancy filled, how, RSMo 494.260

497.010. Juries, petit and grand, in certain counties.—In every judicial circuit in this state comprised of a county which now has or may hereafter have not less than four hundred and fifty thousand nor more than seven hundred thousand inhabitants, according to the last preceding national census, all grand and petit jurors for the circuit courts shall be selected as provided in this chapter.

(RSMo 1939 §749, A. L. 1947 V. 1 p. 342, A. L. 1951 p. 562, A. L. 1961 pp. 422, 420, A. L. 1965 p. 654)
Prior revisions: 1929 §8793, 1919 §6656, 1909 §7318

Jurors for magistrate court, board of jury supervisors to select, RSMo 499.030

497.020. Board of jury supervisors—quorum.—There is hereby created a board of jury supervisors. The judges of the circuit court of said judicial circuit shall be and constitute said board. A majority shall constitute a quorum for the transaction of business and the acts of a majority of those present at any meeting at which a quorum is present shall be the duly considered acts of the

board.

(RSMo 1939 §750, A. L. 1947 V. 1 p. 342)
Prior revisions: 1929 §8793, 1919 §6657, 1909 §7319

497.030. Duties of board of jury supervisors.—1. It shall be the duty of the board of jury supervisors, in addition to the duties herein enumerated, to exercise a general supervisory control over the jury commissioner and all deputies appointed as provided in this chapter by said board in any such judicial circuit; also, over the number of names on the annual jury list compiled as provided in section 497.130, which shall in no case be less than twenty-five thousand, and over the lists and records of jurors and the allowance of exemptions and excuses from jury service, and to see that all laws relative to juries and jury duty are faithfully complied with.

2. It shall also be the duty of said board to see that names of persons selected for service as grand jurors in any such judicial circuit are made into a separate list and stricken from the general list in the office of the said board of jury supervisors, and that all such persons are excused from petit jury service, during the time their names are on such grand jury list.

(L. 1947 V. 1 p. 342 §751, A. L. 1953 p. 521)

497.040. Appointment of jury commissioner.—Within sixty days after the effective date of this chapter, the said board of jury supervisors, or a majority of them, shall appoint a jury commissioner who shall have been a resident of such judicial circuit for at least five years preceding his appointment.

(L. 1947 V. 1 p. 342 §752)

497.050. Removal of jury commissioner—deputy to serve, when—board to fill vacancy.—1. The jury commissioner so appointed shall hold office at the pleasure of the board of jury supervisors. The said board of jury supervisors shall have power at any time to remove such jury commissioner for any cause by said board, or a majority of them, deemed sufficient, by an order entered on the records of said board declaring the fact of such removal.

2. In the event of the sickness, absence or disability of the jury commissioner, the board of jury supervisors shall designate a deputy to perform the duties of jury commissioner.

3. The appointment or removal of such jury commissioner shall be certified by the chairman of said board, to the county court of said judicial circuit. In case of any vacancy occurring in said

office of jury commissioner, it shall be the duty of said board to fill such vacancy by appointment of some other person possessing the proper qualifications, in like manner as herein provided.
(L. 1947 V. 1 p. 342 §752)

497.060. Jury commissioner to take oath of office.—Before entering upon the duties of his office the person so appointed jury commissioner shall take and subscribe before the presiding judge of circuit court of such judicial circuit, an oath or affirmation to support the Constitution of the United States and of this state, and to demean himself faithfully in office.
(L. 1947 V. 1 p. 342 §752)

497.070. Salary of jury commissioner.—The jury commissioner shall receive a salary of six thousand six hundred dollars per annum, payable in equal monthly installments at the end of each month. The salary shall be paid by the county in which the judicial circuit is located.
(L. 1947 V. 1 p. 342 §753, A. L. 1957 p. 513, A. L. 1961 p. 422)

497.080. Deputy jury commissioners, appointment, oath of office, duties.—1. The board of jury supervisors shall, from time to time whenever necessary for the proper discharge of their duties, appoint two or more deputy jury commissioners, one of which shall be designated as chief deputy. The appointments shall be entered in the record of the board, and a certified copy thereof shall be filed with and preserved by the registrar.

2. Each deputy before entering upon his duties as such, shall take and subscribe before the presiding judge of the circuit court an oath or affirmation to support the Constitution of the United States and of this state and to demean himself faithfully in office. Each deputy shall obey the lawful orders of the board and the jury commissioner pertaining to the proper execution of his duties.
(L. 1947 V. 1 p. 342 §753, A. L. 1957 p. 513)

497.090. Salary of deputies.—Each of the deputies who are regularly employed throughout the year shall receive for his services a salary not exceeding three hundred dollars per month except the chief deputy who shall receive a salary not exceeding three hundred fifty dollars per month; and each of the deputies who are employed for temporary purposes shall receive a salary not exceeding ten dollars per day for each and every day he is actually employed in performing his duties as such. The amount of the salary shall be fixed by the board in each case and the salaries shall be provided for and paid monthly by the county in which the judicial circuit is located, in like manner as herein provided for the payment of the salary of the jury commissioner.
(L. 1947 V. 1 p. 342 §753, A. L. 1957 p. 513, A. L. 1961 p. 422)

497.100. Meetings of board of jury supervisors.—The said board of jury supervisors shall hold meetings at least once every three months,

and at any other time on call of the chairman of said board or on call of any two members of the said board whenever the business of the said board may require it.
(L. 1947 V. 1 p. 342 §762a)

497.110. Jury commissioner to be secretary of board of supervisors.—The jury commissioner shall be the secretary of the said board of jury supervisors, and shall perform such functions as such secretary, as may be required of him by the said board.
(L. 1947 V. 1 p. 342 §762a)

497.120. Reports of jury commissioner.—1. It shall be the duty of said jury commissioner at least once every three months, to make a report in writing, of his proceedings as such jury commissioner. Such report shall be presented to said board during the session thereof, and shall be by order of said board entered upon the records thereof. Said report shall show, among other things, the number of jurors called for service, the number who served, the number excused, the number of jurors furnished by said jury commissioner for service in the several courts.

2. Said jury commissioner shall, within a week after the first day of September, including the year in which he shall be appointed, make a report in writing, of his proceedings as such jury commissioner during the twelve months next preceding the thirty-first day of August in said year. Such report shall contain a statement of the expense of his office, the number of deputies employed and the time during which each of them was employed, and the compensation received by them and a summary of the items of the quarterly report.
(L. 1947 V. 1 p. 342 §763)

497.130. List of jurors, selection, date processing equipment authorized—questionnaire—refusal to answer, contempt—false answer, misdemeanor.—1. The board of jury supervisors shall at least biennially compile a list of as many names as the board of jury supervisors designates in a written order made for that purpose by consulting any public records. Automation data processing equipment and procedures may be utilized in the selection of the names for the list and in the actual compilation of the list. The list in no case shall contain less than twenty-five thousand names to be selected as nearly as may be equally from the several voting precincts in the county. The compiled list shall constitute the jury list. A key number shall be designated by the board of jury supervisors, in a written order made for that purpose, which shall not be the same for any two consecutive periods. The jury commissioner shall select from the list of qualified voters the names which appear on the list in positions corresponding to the key number or multiples thereof until a sufficient number of names, which in no case shall be less than twenty-five thousand, are selected to make up the required number of prospective jurors. In the selection of names of prospective

jurors from the list of voters, no examination shall be made into the qualifications of persons selected, except that a suitable questionnaire and return shall be sent to the persons selected according to the key number or multiples thereof. The questionnaire shall be in the following form and none other, without additions or subtractions, to wit:

OFFICIAL NOTICE AND QUESTIONNAIRE
(Not a Summons)

No. _____
Name _____
Address _____
City _____
Enter change of address here _____

You have been selected under the provisions of the Missouri statutes for jury service.

This questionnaire should be returned immediately.

The laws of the State of Missouri provide that if you do not answer and return this questionnaire, you are subject to citation for contempt.

The law further provides that if you knowingly and falsely answer any of the questions herein contained, you may be guilty of a misdemeanor.

The law requires your name to be placed in the jury wheel if answer is not received promptly.

BY ORDER OF THE BOARD OF JURY SUPERVISORS, UNDER AND BY AUTHORITY OF LAW.

Jury Commissioner

- (1) Please state your sex. Male () Female () (If you are a female and do not wish to serve, see back of questionnaire.)
- (2) Name of husband or wife _____
- (3) Are you over sixty-five years of age? Yes () No (). Date of birth. Month _____ Day _____ Year _____
- (4) Are you a member of the fire company or police department? Yes () No (). (If your answer is "yes", state which.) _____
- (5) Are you actually exercising the functions of clergyman or any professor or other teacher of any school of learning? Yes () No (). (If your answer is "yes", state where you are so engaged.) _____
- (6) Are you a registered and licensed osteopathic physician, veterinarian or chiropractor? Yes () No (). (If your answer is "yes", state which.) _____
- (7) If you are a female, or if your answer to any of the above questions 3, 4, 5 and 6, is "yes", then under the law of Missouri, you cannot be compelled to serve as a juror, so state if you will serve. Yes () No ().
- (8) Are you actually engaged in the practice of law, medicine or dentistry? Yes () No (). (If so, please state which profession.) _____
- (9) Are you a member on active duty with any branch of the armed forces of the United States? Yes () No ().
- (10) Is the address shown on the questionnaire correct? Yes () No (). (If your answer is "no", state present address.) _____
- (11) Are you physically able to serve? Yes () No (). (If not, attach physician's or authorized Christian Science practitioner's statement or you will be called.) _____
- (12) Have you served within the last year? Yes () No (). (This will be checked if your answer is "yes".) (As a part of said questionnaire, the following information and none other may be elicited without addition or subtraction.)

TO MEN OVER 65 YEARS OF AGE:

If you are over sixty-five and elect not to serve, fill out this paragraph and mail questionnaire at once to jury commissioner. It will not be necessary to answer the other questions.

Give date of birth _____
Day _____ Month _____ Year _____

I elect not to do jury service.

Signature _____

TO WOMEN:

The constitution permits women to elect to serve or not to serve as jurywomen. Any woman who elects not to serve will fill out this paragraph and mail this questionnaire to the jury commissioner at once. It will not be necessary to answer the other questions.

I elect not to perform jury service.

Signature _____

2. When the return questionnaire is received by the jury commissioner, the name of the person returning the questionnaire shall immediately be put on the list of prospective jurors unless the person returning the questionnaire is ineligible to serve as a juror under section 494.010 or 494.020, RSMo, or is entitled to be excused from jury service under section 494.031, RSMo, and by the return questionnaire requests exemption from jury service, none of whom shall be put on the list of prospective jurors.

3. If any person refuses or neglects to answer promptly all questions and to sign his name, and return the questionnaire to the board as herein provided, his name shall be placed on the list of prospective jurors and he may be cited and charged for contempt by the presiding judge of the circuit court and caused to appear before him. After reasonable notice and a hearing, if the judge is satisfied that the refusal or neglect is without a good and sufficient reason, he may adjudge the person to be guilty of contempt.

4. If any person knowingly answers any of the questions falsely, he is guilty of a misdemeanor.
(L. 1947 V. 1 p. 342 §754, A. L. 1951 p. 562, A. L. 1953 p. 521, A. L. 1955 p. 584, A. L. 1957 p. 514, A. L. 1965 p. 654, A. L. 1967 p. 656, A. L. 1974 H. B. 1084)

(1971) Selection of jurors from registered voters does not violate fifth and fourteenth amendments to federal constitution. *State v. Parker* (Mo.), 462 S. W. (2d) 737.

497.140. Lists of prospective jurors, how kept—data processing equipment authorized—court en banc to select data processing equipment—names selected in presence of board.—1. The jury commissioner shall have each name on the list of prospective jurors typed, imprinted or otherwise recorded upon a separate card of uniform size or upon data processing records and shall annually on or before October first of each year beginning on or before October 1, 1968, deposit all such cards in the jury wheel or in the automation data processing equipment provided for that purpose and shall thoroughly mix the same before drawing any of the prospective jurors' names from said wheel or automation data processing equipment. Said wheel, jury lists and records shall be securely

locked and retained constantly under the control of the board.

2. It shall be the duty of the court en banc to select the automation data processing equipment authorized by this chapter.

3. No cards shall be placed in the jury wheel, nor jury records placed in the data processing equipment, unless done so in the presence of a majority of the members of the board of jury supervisors and no card or jury record shall be drawn therefrom unless done so in the presence of the members of said board.

(L. 1947 V. 1 p. 342 §755, A. L. 1953 p. 521, A. L. 1955 p. 584, A. L. 1967 p. 656)

For case notes, see Vol. III RSMo 1949

497.160. General panel for all divisions of circuit court—excuses—judge may allow jurors to leave general jury quarters—jury wheel.—1. Where the circuit court is composed of more than one division except as herein provided, one general panel of jurors shall be drawn for all civil or criminal divisions, the number of names to be drawn for such general panel to be determined by the judge designated by a majority of the judges of the court. The panel shall be drawn and summoned as provided in sections 497.170 and 497.230, and all jurors so summoned shall appear before such judge of said circuit court, who shall hear and determine whether jurors shall be excused from service or excused to a day certain which shall not be for more than ninety days. Whenever any person summoned as a juror under this chapter shall be excused by the court from service to a later time certain, the court shall designate the time when he shall so serve, and the jury commissioner shall be notified thereof by the judge of the division of said court. The jury commissioner shall thereafter cause said juror's name to be included on a separate list for service on such later date. All persons desiring to be excused from serving as jurors shall present their application to the judge having charge of such jurors.

2. Those not excused shall be retained as the general panel for all divisions of the court and shall be placed in charge of the sheriff, in quarters to be provided by him in the courthouse, there to remain except when actually engaged in the trial of a cause, or thereafter excused by a judge of the court. A judge of the court may allow jurors to remain away from the general jury quarters, provided such jurors shall be promptly available for service at the trial of a cause. Any juror who is so allowed to remain away from the general jury quarters for one or more full days shall not be entitled to any compensation for jury service during such day or days.

3. The name of each juror so enrolled upon such general panel, having been typed or imprinted on a card of uniform size and kind, shall by said jury commissioner in the presence of a judge or sheriff of said court be placed in a small jury wheel which shall be in charge of said jury commissioner to await, under lock, assignment for jury service in the respective divisions.

(RSMo 1939 §754, A. L. 1947 V. 1 p. 342 §757, A. L. 1953 p. 521, A. L. 1955 p. 584, A. L. 1967 p. 656)

Prior revisions: 1929 §8799; 1919 §6661; 1909 §7323

(1952) Where judge personally excused seventeen veniremen and noted on returned writs of thirty-three veniremen that they were to be excused and then directed the jury commissioner to excuse thirty-two other veniremen "who wanted to get off," the general panel had been reduced in violation of the statute and conviction by jury selected from such panel could not stand. State v. Thursby (Mo.), 243 S. W. (2d) 859.

For prior cases, see Vol. III RSMo 1949

497.170. Panel of petit jurors—selections—excuses.—1. Whenever any division of said circuit court shall require a panel of petit jurors for jury service, the judge of such division shall designate the number of jurors required and make a requisition therefor upon the jury commissioner in charge of the small jury wheel. Upon receipt of such requisition, the said jury commissioner, in the presence of a sheriff of said court, shall turn said wheel and thoroughly mix the cards therein and, being so situated as to be unable to see the names on said cards, shall publicly draw from said wheel a number of cards equal to the number of petit jurors so required.

2. Such jury commissioner shall then make a list of the names of said jurors so drawn and the sheriff of said court shall cause the jurors whose names are thereupon to appear before the judge of the division so requesting such panel of jurors so drawn to be placed in a sealed envelope and delivered by the sheriff to the judge of said division of said circuit court requesting such panel. The judge of the division of said circuit court so requesting such panel shall cause the list of jurors so furnished to be compared with the cards so received and he shall retain the cards bearing the names of such jurors as may be retained for jury service in said division of said court.

3. Whenever any juror upon such panel shall be excused from further service in said division, such juror shall be directed to return to the quarters provided for the panel of jurors and to report to the sheriff in charge thereof and the card bearing the name of such juror shall be returned to the jury commissioner in charge of said small jury wheel and be promptly replaced in said wheel; provided, that the judge of any division thereof may cause to be drawn and summoned a general panel of jurors for service in such division of said court; the number of jurors so drawn and summoned to be determined by such judge.

4. The judge of the division of said court for which said general panel of jurors was so drawn and summoned shall determine all excuses and shall designate the clerk to be in charge of a small jury wheel. The cards bearing the names of all jurors remaining upon such general panel shall be placed in a small jury wheel and such panels of petit jurors as may be required for service in such service in such division shall be selected by means of said small jury wheel in the same manner, as near as possible, in all respects, as is herein provided for the selection of petit jurors from a full panel of jurors, drawn and summoned for service in all

divisions of said circuit court.

(RSMo 1939 §755, A. L. 1947 V. 1 p. 342 §758)
Prior revisions: 1929 §8800; 1919 §6662; 1909 §7324
For case notes, see Vol. III RSMo 1949

497.180. Extra jurors for trial of particular cause.—When a jury for the trial of a cause cannot be made up from the regular panel, the judge of the court, before whom the cause is pending, by agreement of all the parties thereto, or their attorneys, may make out and deliver to the proper officers a list of jurors, sufficient to complete the panel, but such extra jurors shall be summoned only for the trial of that particular cause.

(RSMo 1939 §756, A. L. 1947 V. 1 p. 342 §759)
Prior revisions: 1929 §8801; 1919 §6663; 1909 §7325

497.190. Names of jurors returned to wheel, when.—The name of every juror drawn for a special venire, and every juror excused by the court from attendance or service shall be returned to the wheel from which it was drawn, unless the judge shall order to the contrary; the jury commissioner shall erase from the list required to be kept by him the name of any juror that shall be so ordered not returned to said wheel.

(RSMo 1939 §757, A. L. 1947 V. 1 p. 342 §757)
Prior revisions: 1929 §8802; 1919 §6664; 1909 §7326

497.201. General provisions as to disqualification and exemption apply.—The provisions of sections 494.010, 494.020, 494.031 and 494.040, RSMo, relating to the qualifications and disqualifications of jurors and exemptions from service as a juror, shall be applicable to jurors drawn and selected under the provisions of this chapter.

(L. 1959 S. B. 246 §497.200)

(1952) Where sheriff reported inability to serve regularly drawn juror (who had removed from the state) and jury commissioner upon finding same name in telephone book, checked to see if such person resided at address given, and then mailed summons to him, fact that such juror appeared and served, while irregular, would not justify granting of new trial. Sullivan v. K. C. Pub. Serv. Co., 363 Mo. 68, 248 S. W. (2d) 605.
For prior cases, see Vol. III RSMo 1949

497.210. Challenge for cause.—Any party may challenge any juror for cause for any reason mentioned in sections 494.010 and 494.020 and for any other causes authorized by the laws of this state.

(RSMo 1939 §759, A. L. 1947 V. 1 p. 342 §760, A. L. 1965 p. 654)
Prior revisions: 1929 §8804; 1919 §6666; 1909 §7328

497.230. Summons, how served.—Summons for jury duty may be served by the sheriff or by using the United States mail. Actual receipt of summons by mail by the person summoned for jury duty or by some member of his family over the age of fifteen years shall be lawful service.

(L. 1947 V. 1 p. 342 §761)

497.240. Courts may direct number of jurors to be summoned and make rules for their service.—Each of said courts herein referred to may direct, from time to time, the number of jurors to be summoned for said court, and how long they shall be summoned before their attendance shall be required, and may make such rules and orders as it may deem proper, touching the jury service of

the court, not inconsistent with the provisions hereof, and may enforce same by attachment and fine not exceeding one hundred dollars.

(RSMo 1939 §760, A. L. 1947 V. 1 p. 342 §762)
Prior revisions: 1929 §8805; 1919 §6667; 1909 §7329

497.250. Consecutive time petit juror may serve.—No petit juror shall be permitted to serve on such jury for more than one consecutive week during any term of court; provided, that in no case shall this section cause the discharge of any juror during the actual pendency of the trial of any cause.

(RSMo 1939 §761, A. L. 1947 V. 1 p. 342 §762)
Prior revisions: 1929 §8806; 1919 §6668; 1909 §7330

497.260. Special grand jury list.—1. The circuit judges shall from time to time select the names of six hundred persons, known or believed by them to be in every way fitted for grand jury service, said selection to be repeated whenever deemed necessary by said judges of the circuit court, which names shall, by said judges, be erased from the petit jury lists in the said board of jury supervisors' office, or caused by them to be erased by said jury commissioner, but by them to be deposited in a special grand jury wheel, which, after being properly secured, shall be delivered to the care of the jury commissioner of the board of jury supervisors, who shall be responsible for the proper custody of the same, and which after the names are once placed therein, shall be opened and drawn only, by said jury commissioner, or one of his deputies, in the presence of two or more of said circuit judges, upon requisition of the judge of the criminal division of the circuit court for such number of grand jurors as may be required for any one term in said court.

2. The board of jury supervisors shall have the power, from time to time, whenever it shall appear to their satisfaction that a juror selected for grand jury service has died, moved from the jurisdiction of the court, or become otherwise disqualified to cause the name of each and every such person to be removed from the said special grand jury wheel. The judges of the circuit court in general term shall be empowered to fill any vacancy in the grand jury list, and cause the names of the persons so selected as grand jurors to be deposited in said special grand jury wheel.

(L. 1947 V. 1 p. 342 §764)

Grand jury to be called each term to attend criminal division.
RSMo 478.487

497.270. Selection of grand jurors.—The number of names of grand jurors to be thus drawn from said special grand jury wheel shall not be less than twenty-four nor more than thirty-six for each of the September and March terms of said criminal division of the circuit court. If any of the persons whose names are drawn are unable to serve for any reason, the judge of the court may require that additional names be drawn but the total number of names from which the grand jury is selected at any term of court shall not exceed thirty-

Qualifications of jurors.—Every juror, grand or petit, shall be a citizen of the state, a resident of the county or of a city not within a county for which the jury may be impaneled; sober and intelligent, of good reputation, over twenty-one years of age and otherwise qualified.

3707 JURIES IN COUNTIES 450,000—700,000 INHABITANTS (JACKSON CO.) §497.290

six. From the names thus drawn in the September term, the judge of the criminal division of the circuit court shall select twelve grand jurors who shall serve continuously throughout the said September term and the succeeding November and January terms and until a new grand jury is summoned and sworn in during the following March term. From the names thus drawn in the March term, the judge of the criminal division of the circuit court shall select twelve grand jurors who shall serve continuously throughout the said March term and the succeeding May term and until a new grand jury is summoned and sworn in during the following September term. In addition to the twelve grand jurors selected at the September and March terms, the judge shall also select at each such term alternate grand jurors who shall serve only if ordered by the judge to do so because of the death, disability or inability to serve of one or more regularly selected grand jurors. The names of such persons that have been drawn, but not selected to serve by said judge, shall be re-

turned to the special grand jury wheel by the jury commissioner of the board of jury supervisors in the presence of one or more of said circuit judges immediately after the terms for which they were drawn.

(L. 1947 V. 1 p. 342 §764, A. L. 1961 p. 314)

497.280. List of 600 names to be deposited with the clerk of the circuit court.—The list of six hundred names selected by the circuit judges duly certified to by the clerk of the circuit court shall be deposited with the clerk of the circuit court for the trial of criminal causes, immediately after said names are selected by the said circuit judges in general term.

(L. 1947 V. 1 p. 342 §764)

497.290. Person or officer failing to perform duties—misdemeanor.—Any person or officer who shall fail to perform any of the duties required by this chapter shall be deemed guilty of a misdemeanor.

(RSMo 1919 §763, A. L. 1947 V. 1 p. 342)

Prior revisions: 1929 §8509, 1919 §6671, 1909 §7333